

of Alien Labor Certification Appeals on or before the end of the 21-day period set forth in this paragraph, and shall be consistent with the requirements of § 656.26(b)(4) of this part.

(c) *Review on the record.* The Board of Alien Labor Certification Appeals shall review the denial of labor certification on the basis of the record upon which the denial of labor certification was made, the request for review, and any Statements of Position or legal briefs submitted and shall:

(1) Affirm the denial of the labor certification; or

(2) Direct the Certifying Officer to grant the certification; or

(3) Remand the matter to the Certifying Officer for further consideration or factfinding and determination; or

(4) Direct that a hearing on the case be held pursuant to paragraph (f) of this section.

(d) *Notifications of decisions.* The Board of Alien Labor Certification Appeals shall notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the decision pursuant to paragraph (c) of this section, and shall return the record to the Certifying Officer unless the case has been set for hearing pursuant to paragraph (f) of this section.

(e) *Remanded cases.* If the case is remanded, the Certifying Officer shall do the additional factfinding or consideration in accordance with §§ 656.24 and 656.25 of this part, but such factfinding and consideration shall be limited to the issues for which the case has been remanded.

(f) *Hearings.* (1) *Notification of hearing.* If the case has been set for a hearing, the Board of Alien Labor Certification Appeals shall notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the date, time, and place of the hearing, and that the hearing may be rescheduled upon written request and for good cause shown.

(2) *Hearing procedure.* (i) The "Rules of Practice and Procedure For Administrative Hearings Before the Office of Administrative Law Judges", set forth at 29 CFR part 18, shall apply to hearings pursuant to this paragraph (f).

(ii) For the purposes of this paragraph (f)(2), references in 29 CFR part 18 to: "administrative law judge" shall

mean the Board of Alien Labor Certification Appeals member or the Board of Alien Labor Certification Appeals panel duly designated pursuant to § 656.27(a) of this part; "Office of Administrative Law Judges" shall mean the Board of Alien Labor Certification Appeals; and "Chief Administrative Law Judge" shall mean the Chief Administrative Law Judge in that official's function of chairing the Board of Alien Labor Certification Appeals.

[52 FR 11218, Apr. 8, 1987]

§ 656.28 Document transmittal following the grant of a labor certification.

If a labor certification is granted, except for labor certifications for occupations on *Schedule A* (§ 656.10) and for employment as a sheepherder pursuant to § 656.21a(b), the Certifying Officer shall send the certified application containing the official labor certification stamp, supporting documentation, and complete Final Determination form to the employer, or, if appropriate, to the employer's agent, indicating that the employer should file all the documents with the appropriate INS office.

[56 FR 54930, Oct. 23, 1991]

§ 656.29 Filing of a new application after the denial of a labor certification.

(a) A new application for labor certification by the same employer involving the same occupation may be filed at any time after the expiration of 6 months from the date of a denial of certification by the Certifying Officer, except that, if the certification was denied solely because the wage or salary offered was below the prevailing wage, the employer may reapply immediately pursuant to §§ 656.21, 656.21a, or 656.23, as appropriate.

(b) An alien who is denied a labor certification for a *Schedule A* occupation, except for employment as a physical therapist or as a professional nurse, may at any time have an employer file for a labor certification on the alien's behalf pursuant to § 656.21. Labor certifications for professional nurses and for physical therapists shall be considered only pursuant to §§ 656.10 and 656.22.